

REBUTTAL TESTIMONY

of

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Commonwealth Edison Company

Tariffs and charges submitted pursuant to
Section 16-108.5 of the Public Utilities Act.

Docket No. 11-0721

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Introduction

Q. Please state your name and business address.

A. My name is Peter Lazare. My business address is 527 East Capitol Avenue,
Springfield, Illinois 62701.

Q. Are you the same Peter Lazare who provided direct testimony in this case?

A. Yes, I am.

Q. What is the purpose of your rebuttal testimony in this proceeding?

A. I address two sets of arguments by Commonwealth Edison ("ComEd" or the
"Company") witness Dr. Ross Hemphill. The first set pertain to how cost of
service directives from the Commission's Final Order in Docket No. 10-0467
("10-0467 Order") should be incorporated into the ratemaking process. The
second set of arguments concern my proposed alternative to the customer,
meter and delivery charges presented in ComEd's initial filing.

Directives in the 10-0467 Order

**Q. How does Dr. Hemphill respond to your recommendation that the
Commission direct the Company to incorporate directives from the 10-0467
Order into its initial filing for the first revenue neutral cost of service and
rate design proceeding required by Section 16-108.5 of the Public Utility
Act (the "Formula Rate Law")?**

25 A. He opposes my recommendation.

26

27 **Q. What arguments does he make on the issue?**

28 A. Dr. Hemphill argues that my recommendation “goes far beyond what the
29 Commission ordered in Docket No. 10-0467 and far beyond what is appropriate.”
30 (ComEd Ex. 11.0, p. 22) He states that in requiring the Company to provide
31 information and studies, the Commission “took great care not to order ComEd to
32 *propose* those studies as *ComEd’s position*.” (*Id.*, **emphasis in original**) Dr.
33 Hemphill goes on to argue:

34 The Commission can doubtless direct ComEd to provide and present data
35 and analyses, and ComEd will comply, but ComEd is entitled to adopt the
36 *position* result that ComEd believes is just and reasonable. (*Id.*)
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38

39 **Q. Does Dr. Hemphill accurately characterize all of the Commission directives**
40 **on cost of service issues?**

41 A. No, he does not. The Commission did not merely require the Company to
42 present information. It also mandated that specific changes be incorporated into
43 the Company’s cost of service approach for its next rate case filing. For example,
44 the Commission stated as follows in its 10-0467 Order about the use of direct
45 observation:

46 ComEd shall work with Staff on this issue to develop a scientifically-
47 significant representative of its direct observations on this issue. It shall
48 also have this representation in its cost of service study/studies in its next
49 rate case. This analysis shall be part of any initial rate case filing that
50 ComEd makes. (Final Order, Docket No. 10-0467, May 24, 2011, pp. 180-
51 181)

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53 This is a clear mandate by the Commission for ComEd to revise its cost of

54 service study to more appropriately incorporate the results of direct observations.

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56 With regard to the issue of sampling, the 10-0467 Order discusses the
57 Company's response to the Order in Docket No. 08-0532 "to explore whether
58 sampling techniques could be used "to develop a more accurate and transparent
59 differentiation of primary and secondary costs," and "to explore in any
60 subsequent rate proceeding whether sampling techniques can be used to
61 allocate costs to customer classes for underground circuits operating at primary
62 voltage serving customers only at secondary voltages." (Final Order, Docket No.
63 10-0467, May 24, 2011, pp. 181-182) Clearly, the language of the Order is not to
64 produce some analysis that would serve only information purposes, but rather to
65 determine whether sampling methods can be used in the cost allocation process.
66 Furthermore, in its conclusion on the issue, the Commission directed that
67 "ComEd shall examine a larger, representative sample in its analysis and present
68 the results contemporaneously with the initial filing in its next rate case." (Final
69 Order, Docket No. 10-0467, May 24, 2011, p. 182) Thus, based on its statement
70 about the intent of the 08-0532 Order, the Commission hopes that the sampling
71 for presentation in the next rate case may be used not just for illustration but also
72 "used to allocate costs to customer classes for underground circuits operating at
73 primary voltage serving customers only at secondary voltages."

74
75 The Company also fails to accurately characterize the directive in the 10-0467
76 Order concerning the review of other utilities' treatment of primary and secondary
77 cost issues. In the 10-0467 Order, the Commission states that "by far, the most

troubling aspect here, is the absence of evidence indicating that ComEd factored its analysis of these other utilities into its analysis of its primary and secondary costs.” (Final Order, Docket No. 10-0467, May 24, 2011, p. 185) The Commission goes on to state that its requirement in Docket No. 08-0532:

was meant, solely, to require ComEd to educate itself as to how to apply a meaningful primary/secondary split regarding those costs, after having examined what other utilities in the United States have done. Yet, ComEd has provided no indication that it used any of its analysis of these other utilities here. (Final Order, Docket No. 10-0467, May 24, 2011, p. 185)

The Commission statement that “the most troubling aspect” is ComEd’s failure to incorporate the analysis of other utilities appears to conflict with Mr. Hemphill’s contention that “the Commission “took great care not to order ComEd to *propose* those studies as *ComEd’s position*”.

Q. Do you also consider Dr. Hemphill’s arguments in rebuttal to be inconsistent with his direct testimony on this issue?

A. Yes. Dr. Hemphill described the Company’s strategy for addressing these issues as follows in his direct testimony:

Although this is not a general rate case filing, ComEd is providing all those materials, including the illustrative cost allocations, to the Commission for informational purposes along with the information I discussed in response to the previous question. ComEd is also including those materials in the courtesy copies of its submission that are being provided to stakeholders. ComEd has not, however, changed its previously approved rate design in the rates proposed in this proceeding, and it has not included those materials in testimony. That is principally because this rate filing does not concern rate design, which is what those studies and data are about. ComEd is required to file in this proceeding rates with a design consistent with that approved in our last rate case. As I explain further below, the first proceeding dealing with rate design is not to be held until well after Rate DSPP is approved. (ComEd Ex. 1.0, p. 17)

In the above passage, Dr. Hemphill states directly that ComEd has not changed

its rate design or included materials in testimony principally because the current case does not concern rate design. There is nothing in that passage to support Dr. Hemphill's contention that the Company "is entitled to adopt the *position* that ComEd believes is just and reasonable" regardless of the directives in the Commission's 10-0467 Order.

Q. What do you therefore conclude from the discussion of this issue?

A. I find that Dr. Hemphill has failed to substantiate his claim that "the Commission "took great care not to order ComEd to *propose* those studies as *ComEd's position*". In fact, as the preceding discussion indicates, the Commission's 10-0467 Order expressed the clear expectation that the Company would upgrade its ECOSS to address the Commission's concerns with respect to direct observation, sampling and a review of the primary/secondary voltage split used by other utilities.

Q. How does your conclusion affect the recommendation in your direct testimony that the Company be required to incorporate the directives from the 10-0467 Order into its filing for the upcoming revenue-neutral cost of service and rate design proceeding?

A. It lends further support to that recommendation. As I have shown, the Commission's directives seek more than information or illustration. They require revisions to the cost of service studies sponsored by ComEd. The next meaningful opportunity to review and analyze those studies is in the upcoming revenue neutral cost of service and rate design cases required by the Formula

Rate Law. Thus, the Commission should adopt my recommendation and state in its Final Order for this case that the Company should provide the requisite studies and analyses in its initial filing for that proceeding.

Fixed Cost Recovery for Residential and Watt Hour Customers

Q. Does ComEd witness Hemphill respond to your proposals concerning the design of customer and delivery charges for Residential and Watt Hour customers?

A. Yes. He presents a number of arguments against my proposal.

Q. What is his first objection?

A. Dr. Hemphill begins by contending that “the time to argue that ComEd’s filed rates do not comply with the Order has long since passed. (ComEd Ex. 11.0, p. 24) He goes on to argue that “[t]his docket is not an appropriate venue to attack that decision months later.” (*Id.*)

Q. Do you agree with this argument by Dr. Hemphill?

A. No, I do not. The formula rate law requires that the rate design in this case be consistent with the 10-0467 Order. The Commission’s language in that Order is clearly relevant to the determination of rate design in this case. And the fact remains that the compliance rates in that case are inconsistent with the language of that order.

When a mistake is discovered and the compliance rates are found to be flawed, it is difficult to conceive how basing rates in this case on the flawed rates that emerged from the compliance process in Docket No. 10-0467 guarantees consistency with the 10-0467 Order which prescribes a different ratemaking approach.

The underlying logic of Dr. Hemphill's objection appears to be that there is some kind of statute of limitations on finding rate design mistakes. I would take the more reasonable position that a mistake should be corrected when it is discovered. Furthermore, the current proceeding designed to tie ratemaking to the 10-0467 Order is the appropriate venue to correct this mistake.

Q. Does Dr. Hemphill discuss the process by which compliance rates were presented and reviewed in Docket No. 10-0467?

A. Yes. He presents a lengthy discussion seeking to demonstrate how Staff and the Commission both signed off on the Company's compliance rates. (ComEd Ex. 11.0, pp. pp. 24-26)

Q. How do you respond?

A. I would agree that Staff, and the Company for that matter, both failed to uncover the discrepancies between the 10-0467 Order and the compliance rate design for Residential and Watt Hour customers in which charges were calculated on the basis of total costs, rather than fixed costs. The difference now is that Staff wants to correct the mistake while the Company seeks to perpetuate it.

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185 **Q. Does Dr. Hemphill contend that Staff's argument on this issue is erroneous**
186 **on a substantive basis?**

187 A. Yes.

188

189 **Q. What is the basis for Dr. Hemphill's claim?**

190 A. Dr. Hemphill claims that I have taken a single sentence in the 10-0467 Order out
191 of context and thereby failed to accurately reflect the Commission's conclusion
192 on this matter.

193

194 According to Dr. Hemphill, "Mr. Lazare bases his argument on the claim that the
195 statement "... the use of volumetric charges be reduced so that they recover 50%
196 of *fixed* delivery service costs ..." means that fixed charges can also *only* recover
197 50% of fixed delivery costs." (ComEd Ex. 11.0, p. 27, emphasis in original) Dr.
198 Hemphill contends, "[w]e know that because he plainly argues that 'The
199 Commission should approve a set of customer and meter charges that
200 collectively recover 50% of fixed costs only.'" (ComEd Ex. 11.0, pp. 27-28) He
201 then concludes by stating:

202 But, regardless, the sentence standing alone says nothing about the
203 recovery of *total* costs, and thus cannot form the basis of an argument that
204 a rate design that recovers 50% of total costs through fixed charges.
205 (ComEd Ex. 11.0, p. 28)

206

207 While this argument is not clearly stated, Staff infers that Dr. Hemphill is arguing
208 that Staff's focus on the issue of fixed costs does not apply to customer and
209 meters charges set to recover 50% of total costs.

210

211 **Q. Does Dr. Hemphill present a compelling argument?**

212 A. No, he does not. The real relevance issue applies to ComEd which calculates
213 rates according to percentages of total costs when the 10-0467 Order specifically
214 states that individual charges should be calculated on the basis of fixed costs
215 only. The 10-0467 Order contains no language to support ComEd's decision to
216 set combined customer and meter charges equal to 50% of total costs.

217

218 **Q. Does Dr. Hemphill cite other language in the 10-0467 Order to counter**
219 **Staff's argument that customer and meter charges be set at 50% of fixed**
220 **costs?**

221 A. Yes, he presents two citations in the 10-0467 Order where the Commission
222 recognizes "the importance of recovering fixed costs predominantly through fixed
223 charges." (ComEd Ex. 11.0, p. 28) He then concludes:

224 Mr. Lazare's reading of the sentence turns that principle on its head. As
225 opposed to ComEd's currently effective rates – rates that meet the
226 Commission's stated overall objective – under Mr. Lazare's new proposal
227 that fixed charges should recover 50% of fixed costs *only*, fixed costs
228 would not be recovered predominantly through the application of fixed
229 charges. (ComEd Ex. 11.0, p. 29)

230

231 **Q. Does Dr. Hemphill accurately convey the Commission's intent concerning**
232 **how fixed costs should be recovered from fixed charges in that**
233 **proceeding?**

234 A. No, he does not. The 10-0467 Order is straightforward about the Commission's
235 intent in setting fixed charges for that case.

The Commission has recognized the importance of recovering fixed costs predominantly through fixed charges and the Commission finds that one of the most important steps in bringing ComEd's rate design in line with its costs is to properly align the fixed and variable portions of ComEd's delivery rates with the fixed and variable costs ComEd incurs to provide delivery service. The Commission also believes that it is important to design rates that reflect cost causation. It is undisputed in this proceeding that ComEd recovers 37% of its fixed charges. In an effort to gradually move towards more realistic cost causation and to avoid rate shock, the Commission concludes that the use of volumetric charges be reduced so that they recover 50% of fixed delivery service costs. (Final Order, Docket No. 10-0467, May 24, 2011, p. 232)

The passage directly focuses on the relationship between fixed costs and fixed charges, and the Commission clearly states that individual charges should be based on the recovery of fixed cost, rather than total costs.

Q. Does Dr. Hemphill further argue that it would be problematic to set volumetric charges to recover 50% of fixed delivery service costs for certain classes?

A. Yes. In his estimation, a problem arises because the adoption of such an approach would require that volumetric charges be increased for both the Watt-Hour or Residential Multi Family Without Electric Space Heat delivery classes. (ComEd Ex. 11.0, pp. 29-30)

Q. How do you respond to his concern?

A. Whether volumetric charges would have to be increased or decreased is irrelevant to this discussion. What matters is that the Commission clearly stated how variable charges for Residential and Watt Hour customers should be

calculated according to their share of fixed costs and rates should be designed accordingly.

Q. Does Dr. Hemphill present a further criticism of your approach to this issue?

A. Yes. He claims I have given the previously-cited passage of the 10-0467 Order “a meaning other than what it says.” According to Dr. Hemphill, the sentence refers to volumetric charges. He goes on to complain that my proposed rate design focuses solely on the variable DFC [Distribution Facilities Charge] charge as the vehicle for recovering 50% of fixed costs and fails to carve out a role for the Illinois Electricity Distribution Tax Charge (“IEDT”). (ComEd Ex. 11.0, p. 30)

Q. Do you consider this argument to be reasonable?

A. No, I do not. The IEDT charge should not be lumped together with the variable DFC in the rate design process because the Commission accorded it a separate role to recover distribution tax costs. The 10-0467 Order states as follows:

In light of the Commission’s prior treatment of the Illinois Electricity Distribution Tax in the Ameren Order, the Commission adopts ComEd’s proposal to modify its rate design to provide a separate volumetric charge for the recovery of the Illinois Electricity Distribution Tax and uncollectible costs associated with the application of the tax for all of the reasons stated herein. (Final Order, Docket No. 10-0467, May 24, 2011, p. 285)

Since, the IEDT charge was established for the narrow purpose of recovering variable IEDT costs, it has no role to play in the recovery of 50% of fixed costs. Therefore, there is no basis for Dr. Hemphill’s argument that this charge should

be factored into the design of variable rates to recover 50% of fixed costs as stated in the Commission's 10-0467 Order.

Q. Does Dr. Hemphill's rebuttal on this issue fall short in another respect?

A. Yes. There is nothing in his discussion to support the Company's proposed rate design which includes fixed and variable charges that each recovers 50% of total costs. Dr. Hemphill offers no justification whatsoever for ComEd's approach in the 10-0467 Order. In fact, the Company's rate design is clearly inconsistent with that Order.

Thus, if Dr. Hemphill's arguments against Staff's approach were found reasonable, that would create a quandary for the ratemaking process because there is no record evidence to show that ComEd's rate design in this docket is consistent with the 10-0467 Order.

Q. Do you find Dr. Hemphill's position on this issue consistent with the Company's arguments in Docket No. 10-0467?

A. No, I do not. The Company's discussion of the issue in its Brief on Exceptions in Docket No. 10-0467 ("BOE") presented a different understanding of the issue.

The issue arose in ComEd's BOE because the Proposed Order ("PO") in that docket reached the same conclusion as the Final Order that volumetric charges should recover 50% of fixed delivery service costs. (Proposed Order, Docket No.

10-0467, p. 218) In response to the PO's conclusion on this issue, the Company
stated in its BOE:

As mentioned previously, ComEd proposed to recover 60%, 70%, and finally 80% of its delivery service costs attributable to residential and watt-hour customers through the application of fixed charges in the first year, second year, and thereafter, respectively. These percentages would apply to all costs, not just fixed costs. However, as adopted in the Proposed Order, the 50% SFV rate design appears to only apply to fixed costs, not to total delivery costs. (ComEd BOE, Docket 10-0467, p. 92)

The Company clearly understood in its BOE that the percentages of costs applied to fixed costs, rather than total costs. Nevertheless, in its compliance rates for that case, the Company based charges for the two classes based on total costs rather than fixed costs, in direct conflict with the Commission order on the case.

Given ComEd's clear understanding as presented in the BOE, it is difficult to comprehend Dr. Hemphill's current stance that charges designed to collect 50% of total costs, rather than fixed costs, should be considered consistent with the 10-0467 Order.

Q. Does this complete your rebuttal testimony?

A. Yes, it does.